

**The Government's Committee Stage Amendments  
to the Stamp Duty (Amendment) Bill 2012**

The Government has informed the Bills Committee on the Stamp Duty (Amendment) Bill 2012 (the Bills) at its meeting on 6 January 2014 that, in addition to the committee stage amendments (CSAs) set out in LC Paper No. CB(1)1719/12-13(01), the Government will introduce some further technical amendments to the Bill as well as amendments to the original CSAs. The finalised version of the Government's full set of CSAs is at **Annex**. Details regarding the additional amendments are highlighted in the ensuing paragraphs.

**A. Withdrawal of the exemption arrangement of the Buyer's Stamp Duty (BSD) in respect of minors who are Hong Kong permanent residents (HKPRs)**

2. The Hon Regina Ip has proposed a CSA to the Bill to remove the BSD exemption for acquisitions of residential properties made by HKPR minors through their trustees or guardians. The Government has already explained in LC Paper No. CB(1)623/13-14(04) that the Government considers the Hon Regina IP's CSA acceptable from both the policy and legal perspectives, and the Government will take over the relevant CSA.

3. The relevant provisions in the Annex are highlighted in **yellow**.

**B. Admissibility of instruments not duly stamped with the BSD**

4. Section 15 of the Stamp Duty Ordinance (Cap.117) provides that instruments not duly stamped are not admissible in certain proceedings. As explained in LC Paper No. CB(1)1288/12-13(01) and LC Paper No. CB(1)1719/12-13(01), to address the concerns of the Law Society of Hong Kong (the Law Society) and the Hong Kong Association of Banks that any failure to pay the BSD by the buyer should not affect innocent parties' right to present the relevant documentation in court proceedings, the Government has previously proposed a CSA to allow an instrument to be received in evidence in civil proceedings before a court, even if it is not duly stamped with the BSD, if the following conditions are fulfilled -

- (a) the instrument is produced by a person other than the purchaser in order to prove the person's title to the property concerned or is produced by the vendor to enforce the instrument;

- (b) the instrument has been registered at the Land Registry; and
- (c) the purchaser has made a misrepresentation that he/she was a HKPR or was acting on his/her own behalf.

5. The Law Society has subsequently shared with the Government their further views on the proposed CSA. While the Law Society understands that the proposed CSA basically reflects their concerns as previously relayed to the Government regarding the application of section 15 of the Stamp Duty Ordinance to the BSD, it has expressed further concerns about practical difficulties in implementing the provisions. For instance, the Law Society points out that if a buyer fails to pay the BSD after signing an agreement and avoids completing the transaction, resulting in the instrument not being duly stamped and hence could not be registered with the Land Registry, the innocent party in the transaction would not be able to rely on the Government's CSAs to adduce the instrument in court without paying the BSD for the buyer concerned. It might also be difficult for innocent parties to prove that the purchaser has made a misrepresentation.

6. To address the Law Society's further concerns, the Government agrees to remove the conditions under paragraph 4 above, other than the requirement that the instrument has to be produced by a person other than the purchaser, to facilitate the implementation of the arrangement. This amendment is in line with the policy intention that any failure to pay the BSD by the buyer should not affect an innocent party's right to present the relevant documentation in court proceedings. The relevant provisions in the Annex are highlighted in **green**.

### **C. Others amendments to improve the clarity of the Bill**

7. The remaining additional CSAs are minor and technical in nature, essentially to improve clarity of the provisions, including those suggested by the Legal Advisor of the Bills Committee. These amendments will not affect the substance of the Bill. Relevant provisions in the Annex are highlighted in **grey**.

Stamp Duty (Amendment) Bill 2012

**Committee Stage**

Amendments to be moved by the Secretary for  
Transport and Housing

<u>Clause</u>	<u>Amendment Proposed</u>
4(3)	In the proposed section 4(3AA)(b), in the Chinese text, by deleting “各人均可被起訴” and substituting “有關法律程序可針對各人提出”.
New	By adding—  <b>“4A. Section 15 amended (non-admissibility, etc. of instruments not duly stamped)</b>  (1) Section 15(1)— <b>Repeal</b> “subsection (1A)” <b>Substitute</b> “subsections (1A) and (1B)”.  (2) After section 15(1A)— <b>Add</b> “(1B) Despite anything in subsection (1), where an instrument is not duly stamped only because the instrument is not stamped in respect of buyer’s stamp duty chargeable on it, the instrument may be received in evidence in civil proceedings before a court if—  (a) in the case of a chargeable agreement for sale, it is produced in evidence by a person who is not the purchaser under the agreement; or  (b) in the case of a conveyance on sale, it is produced in evidence by a person who is not the transferee under the

	conveyance.”.”.
5(1)	In the proposed definition of <i>mentally incapacitated person</i> , by adding “and is, because of his or her mental state, incapable of managing and administering his or her property and affairs” after “(Cap. 136)”.
8	By deleting subclauses (1) and (2) and substituting— “(1) Section 29CA(2)— <b>Repeal</b> “of 24 months” <b>Substitute</b> “specified in the first column of that head”. (2) Section 29CA(3)— <b>Repeal</b> “the 24-month period” <b>Substitute</b> “a specified period”.”.
9	In the proposed section 29CB(3)(a)(ii)(B), in the English text, by deleting “a purchaser” and substituting “the purchaser”.
9	In the proposed section 29CB(4)(b)— (a) in subparagraph (ii), by adding “an order made under section 3 of” after “resumed under”; (b) in subparagraph (ii), by deleting “; or” and substituting a semicolon; (c) in subparagraph (iii), by deleting “545).” and substituting “545);”; (d) by adding— “(iv) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276); (v) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370); (vi) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);

- (vii) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
- (viii) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.

9 In the proposed section 29CB(8)(b) and (9)(b), by deleting “either a minor or”.

9 In the proposed section 29CC(1)(a)(ii), by adding “and (12)” after “section 29CB(10)”.

9 In the proposed section 29CC(1)(b), by adding “, and the person or persons from whom the residential property is to be transferred is or are deemed to be the vendor or vendors under the agreement” after “the agreement”.

9 In the proposed section 29CC(2)(b), by adding “, and the person or persons to whom the consideration is paid or given, or to be paid or given, is or are deemed to be the vendor or vendors under the agreement” after “the agreement”.

11 By deleting subclauses (1) and (2) and substituting—  
    “(1) Section 29DA(2)—  
        **Repeal**  
        “of 24 months”  
        **Substitute**  
        “specified in the first column of that head”.  
    (2) Section 29DA(3)—  
        **Repeal**  
        “the 24-month period”  
        **Substitute**  
        “a specified period”.”.

12 In the proposed section 29DB(3)(b)(ii), in the English text, by deleting “a

purchaser” and substituting “the purchaser”.

- 12 In the proposed section 29DB(5)(b)—
- (a) in subparagraph (ii), by adding “an order made under section 3 of” after “resumed under”;
  - (b) in subparagraph (ii), by deleting “; or” and substituting a semicolon;
  - (c) in subparagraph (iii), by deleting “545).” and substituting “545);”;
  - (d) by adding—
    - “(iv) resumed under an order made under section 4(1) of the Mass Transit Railway (Land Resumption and Related Provisions) Ordinance (Cap. 276);
    - (v) resumed under an order made under section 13(1) of the Roads (Works, Use and Compensation) Ordinance (Cap. 370);
    - (vi) resumed under an order made under section 16 or 28(1) of the Railways Ordinance (Cap. 519);
    - (vii) acquired under an acquisition order made under section 3(1) or (2) of the Land Acquisition (Possessory Title) Ordinance (Cap. 130); or
    - (viii) resumed under an order made under section 37(2) of the Land Drainage Ordinance (Cap. 446).”.
- 12 In the proposed section 29DB(8)(c)—
- (a) by deleting “a mortgagee that” and substituting “its mortgagee that”;
  - (b) by deleting “such a mortgagee” and substituting “the mortgagee”.
- 12 In the proposed section 29DB(9)(b) and (10)(b), by deleting “either a minor or”.
- 12 In the proposed section 29DC(1)(a)(ii), by adding “and (13)” after “section 29DB(11)”.
- 12 In the proposed section 29DC(1)(b), by adding “, and the person or persons from whom the residential property is transferred is or are deemed to be the transferor or transferors under the conveyance” after “the

conveyance”.

12 In the proposed section 29DC(2)(b), by adding “, and the person or persons to whom the consideration is paid or given is or are deemed to be the transferor or transferors under the conveyance” after “the conveyance”.

12 By deleting the proposed section 29DD(1)(b), (c), (d) and (e) and substituting—

“(b) the applicant—

(i) alone or jointly with an associated body corporate within the meaning of section 45(2), became the owner of the lot, or 2 or more lots of which the lot formed part (collectively *the lots*); or

(ii) after becoming the owner as mentioned in subparagraph (i), was, alone or jointly with the associated body corporate, granted a new lot (*the new lot*) by the Government consequent on either or both of the following—

(A) the surrender to the Government of the lot (wholly or partly and whether or not together with any other lot);

(B) the acquisition by the Government through purchase by agreement under section 4A of the Lands Resumption Ordinance (Cap. 124), or resumption by the Government under an order made under section 3 of that Ordinance, of the lot (wholly or partly and whether or not together with any other lot); and

(c) the applicant, alone or jointly with the associated body corporate—

(i) has—

(A) demolished or caused to be demolished all buildings (if any) existing on the lot, the lots or the new lot, other than a

building or part of a building the demolition of which is prohibited under any Ordinance; and

(B) obtained approval of plans and details prescribed in regulation 8(1)(a), (b), (f), (g), (h), (j), (k) and (m) of the Building (Administration) Regulations (Cap. 123 sub. leg. A) in respect of building works to be carried out on the lot, the lots or the new lot from the Building Authority under the Buildings Ordinance (Cap. 123); or

(ii) has obtained consent to commence any foundation works for the lot, the lots or the new lot from the Building Authority under the Buildings Ordinance (Cap. 123).”.

12 By deleting the proposed section 29DD(2).

12 In the proposed section 29DD(4), in the Chinese text, by deleting “任何人是該地段所有不分割份數的法定擁有人之前，該人不屬” and substituting “某人是該地段所有不分割份數的法定擁有人之時，該人方”.

12 By deleting the proposed section 29DD(5).

New By adding—

**“15A. Section 47F amended (relief on transactions under qualified investment arrangement)**

Section 47F(1)—

**Repeal**

“1(1A), 1(1B),”

**Substitute**

“1(1AAB), 1(1A), 1(1B), 1(1C),”.”.



- 16 In the proposed section 63A—
- (a) by deleting “a percentage specified in the second column of”;
  - (b) by adding “to effect a change to the rate of stamp duty set out in that head” after “Schedule”.
- 17 In the proposed section 70(2), by deleting everything after “was published in” and substituting—
- “the Gazette—
- (a) that time for stamping is to be replaced by a period of 30 days commencing immediately after that day; and
  - (b) where before the Amendment Ordinance was published in the Gazette, the relevant instrument had been stamped with the special stamp duty with which it was chargeable in accordance with this Ordinance, section 9 applies only in relation to the additional special stamp duty if it is not paid within the period specified in paragraph (a).”.
- 18 By deleting subclause (2) and substituting—
- “(2) First Schedule—
- Repeal**
- “& 47G”
- Substitute**
- “, 47G, 63A & 70”.”.